



FREE SPEECH

NKU is an inclusive community that promotes and encourages constructive discourse and learning. We welcome differing points of view to be shared in a respectful and collegial environment. This page provides an overview of how we work to create and support an inclusive environment in which freedom of speech and expression thrive.

Free Speech and the First Amendment

What is considered free speech?

Freedom of speech is the right of a person to articulate opinions and ideas without interference, retaliation or punishment from the government. In this context, the term speech is not limited to spoken words. It also includes symbolic speech such as what a person wears, reads, performs, protests and more.

Freedom of speech is protected by the First Amendment of the Constitution of the United States, as well as many state and federal laws. The United States has some of the strongest free-speech protections in the world, and they help form the cornerstone of our democracy. The First Amendment protects even speech that many would see as offensive or hateful.

What is not considered free speech?

Broadly speaking, the First Amendment protects all types of speech with some exceptions. Types of speech that are not protected by the First Amendment include the following:

- **Incitements of violence or lawless action:** There is no right to incite people to break the law, including to commit acts of violence. For an action to constitute incitement, the Supreme Court of the United States has determined that there must be a substantial likelihood of imminent illegal activity and the speech must be directed to cause imminent illegal activity. For example, a speaker on campus who urges an audience to engage in acts of vandalism and destruction of property is not protected by the First Amendment if there is a substantial likelihood of that imminent illegal activity.
- **Fighting words:** Speech that is personally or individually abusive and is likely to incite imminent physical retaliation is not protected.
- **True threats:** Statements in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals are not protected. The speaker does not have to act on his or her words (e.g., commit a violent act) in order to communicate a true threat. For example, if a group of students yelled at a student in a menacing way that would cause the student to fear a physical assault, such speech would not be protected.
- **Obscenity:** Speech or materials may be deemed obscene (and therefore unprotected) if the speech meets the following (extremely high) threshold: It (1) appeals to the "prurient" interest in sex, (2) is patently offensive by community standards and (3) lacks literary, scientific or artistic value.

- **Defamation:** An intentional and false statement about an individual that is publicly communicated, causing injury to the individual is not protected. Defamation is called libel in written form or slander in spoken form.
- **Harassment:** Conduct based on a protected category that is so severe, pervasive and objectively offensive, and that so undermines and detracts from the victim's educational experience, that the victim is effectively denied equal access to an institution's resources and opportunities, is not protected.
- **False advertising:** A knowingly untruthful or misleading statement about a product or service is not protected.
- **Certain symbolic actions:** Symbolic actions can be unprotected only if the actions are otherwise illegal, such as tagging, graffiti, littering or burning a cross on private property.
- **Child pornography**
- **Interference with medical treatment:** Speech that interferes with the treatment of patients is not protected.
- **Invasion of privacy:** An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern is not protected.
- **Material and substantial disruption:** An action that materially and substantially disrupts the functioning of the university or that substantially interferes with the protected free expression rights of others is not protected.

Historically, the Supreme Court has defined these terms very narrowly, limiting the authority of the government and public officials to prohibit or prosecute speech, even if it appears to fall into one of these categories.

What is hate speech? Is it protected under the First Amendment?

The term hate speech is often misunderstood. Hate speech is not a separate category of speech under the law. The term refers to speech that insults or demeans a person or group of people on the basis of attributes such as race, religion, ethnic origin, sexual orientation, disability or gender.

While NKU condemns speech of this kind, hate speech is only unprotected if it falls into one of the categories described above (e.g., "fighting words" or "true threats"). Although this may be difficult to understand or accept, even speech that is hateful or offensive is still likely protected by the First Amendment. However, just because there is a First Amendment right to say something, that doesn't mean it should be said. The First Amendment protects a right to say hateful things, often even when they stand in direct opposition to NKU's values of diversity, inclusion and mutual respect. As a campus community, we must always strive to ensure an environment in which all students, faculty and staff are welcomed, respected and supported, and in which members of this community are tolerant of the ideas and expression of others.

Finally, the First Amendment does not protect actions just because they are motivated by an individual's beliefs or opinions. Therefore, even though hate speech is protected by the First Amendment, *hate crimes* may be regulated by Kentucky and federal criminal laws.